No. 92-2013

Supreme Court, U.S.
FILED
JUL 16 1993
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

NANCY O'MARA EZOLD,
Petitioner,

v.

WOLF, BLOCK, SCHORR and SOLIS-COHEN,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF OF *AMICI CURIAE* FIFTY-FIVE ORGANIZATIONS IN SUPPORT OF THE PETITIONER

LINDA J. WHARTON
Counsel of Record
PAMELA L. PERRY
SUSAN FRIETSCHE
CAROL E. TRACY
WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 401
Philadelphia, PA 19107
(215) 928-9801

SETH KREIMER
3400 Chestnut Street
Philadelphia, PA 19104
Attorneys for Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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BRIEF OF *AMICI CURIAE* FIFTY-FIVE ORGANIZATIONS IN SUPPORT OF THE PETITIONER

INTEREST OF *AMICI CURIAE*

This brief is filed by fifty-five organizations committed to equal opportunity in the workplace for women and other underrepresented groups. *Amici* urge this Court to grant the writ sought by petitioner, Nancy Ezold.

Amici Women's Law Project, NOW Legal Defense and Education Fund, National Women's Law Center, Women's Legal Defense Fund, American Medical Women's Association, National Council of Jewish Women, National Council of Negro Women, American Association of University Women, and Federation of Organizations for Professional Women are particularly concerned with eliminating the pervasive gender- and race-based employment discrimination that prevents women and minorities from advancing into the higher ranks of their professions. Several *amici*, including the Society for American Law Teachers, Hispanic National Bar Association, National Asian Pacific American Bar Association, National Association of Black Women Attorneys, National Association of Women Lawyers, and the women's bar associations of eight states are especially knowledgeable about the barriers to advancement within the legal profession and join this brief out of their concern that all levels of the legal profession be open to women and minorities. *Amici* Mexican American Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and the Japanese American Citizens League believe that the court of appeals' reasoning, if permitted to stand, may weaken federal statutory protections against employment discrimination based on race, ethnicity, and other protected classifications. Further statements of interest are set forth in the Appendix.

Amici have the consent of the parties to file this brief. Letters of consent have been filed with this Court.

SUMMARY OF ARGUMENT

The decision below raises issues of grave national importance because it threatens to exacerbate the already serious difficulties women and minorities face in advancing into higher levels of employment. The ruling of the Court of Appeals for the Third Circuit promotes continued discrimination, and thus underrepresentation of women and minorities in upper-level employment by exempting from traditional judicial review an employer's subjective reasons for denying employment opportunities and by disregarding the attitudinal barriers and organizational bias hindering the advancement of these groups. By that ruling, the decision below charts a new course that contradicts settled Title VII law as established by this Court and other courts of appeals.

Amici rely on the Statement of the Case and Reasons for Granting the Petition set forth in the Petition. They submit this brief to focus the Court's attention on the devastating impact the decision below will have on the ability of women and members of other underrepresented groups to demonstrate illegal bias in promotion decisions for professional employment.

REASONS FOR GRANTING THE WRIT

The story of Nancy Ezold's tenure with the Philadelphia law firm of Wolf, Block, Schorr and Solis-Cohen ["Wolf, Block" or "Firm"] is not merely the story of one woman's struggle to achieve promotion in a male-dominated law partnership. Rather, it is the classic story of a highly qualified woman who was denied promotion while comparably- or less-talented men were granted promotion. It is Ms. Ezold's individual story, and that of countless others who experience similar discrimination, that accounts for the "glass ceiling"—the vast statistical disparity between the number of women and minorities entering the work force and the number being promoted to its upper levels.

Although women have constituted more than one-third of law school enrollment for more than a decade

and now form 37.1% of the associates at the nation's largest law firms, those at the top of the legal profession continue to be predominantly male. Claudia MacLachlan & Rita Henley Jensen, *Progress Glacial for Women, Minorities,* Nat'l L.J., Jan 27, 1992, at 1, 34, 40 [hereinafter Nat'l L.J. Survey]. As of 1991, only 11.1% of partners in large law firms were women. *Id.* at 1. The record for minorities likewise shows gross underrepresentation at the top ranks despite the fact that minorities received between 8% and 13% of J.D. and L.L.B. degrees awarded since 1981. *D.C. Law Firms: More Diversity Needed,* Legal Times, Apr 12, 1993, at 15. In 1991, African-Americans, Latinos, Native Americans, and Asian-Americans combined accounted for 6.8% of all associates, and only 2.4% of partners at large law firms. Nat'l L.J. Survey, *supra,* at 1.

The "glass ceiling" phenomenon also infects corporate America. Based on data from ninety-four Fortune 1000 companies, the Department of Labor found that although women represented 37.2% of employees, they represented only 6.6% of managers at the executive level. U.S. Dep't of Labor, *A Report on the Glass Ceiling Initiative* 6 (1991) [hereinafter *Glass Ceiling Initiative*]. Minorities represented 15.5% of employees and only 2.6% of managers at the executive level. *Id.*

The Department of Labor linked these statistical disparities not to innocent explanations, but to discriminatory practices:

> While some assert that minorities and women have neither been in the workforce long enough, nor have the needed credentials, the vast majority of available research information points to artificial barriers as a significant cause for why minorities and women have not advanced further in corporate America.

Id. at 18. The American Bar Association's Commission on Women in the Profession concurred, identifying several overt and subtle barriers that account for the lack of full integration and participation of women in the legal

profession. ABA Comm. on Women in the Profession, *Report to the House of Delegates* 3-4 (Aug. 10, 1988) [hereinafter *ABA Report*].

Congress has recognized the disturbing persistence of the "glass ceiling":

> (1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;
>
> (2) artificial barriers exist to the advancement of women and minorities in the workplace.

Sections 202(a)(1) & (a)(2) of the Glass Ceiling Act of 1991, Pub. L. No. 102-166, tit. II, 105 Stat. 1081. A failure to review carefully employment decisions challenged as biased can only exacerbate the discriminatory exclusion of women and other underrepresented groups from the upper-level jobs in America.

I. THE DECISION BELOW DEPARTS FROM SETTLED TITLE VII LAW BY EXEMPTING FROM TRADITIONAL JUDICIAL REVIEW AN EMPLOYER'S SUBJECTIVE REASONS FOR DENYING EMPLOYMENT OPPORTUNITIES.

Evaluations for promotion into or performance in upper-level jobs typically are based on subjective criteria, because these positions frequently require abilities not fully measured by objective standards. *See, e.g., Bauer v. Bailar*, 647 F.2d 1037, 1046 (10th Cir. 1981); *Stewart v. General Motors Corp.*, 542 F.2d 445, 450 (7th Cir. 1976), *cert. denied*, 433 U.S. 919 (1977); *Rogers v. International Paper Co.*, 510 F.2d 1340, 1345 (8th Cir.), *vacated on other grounds*, 423 U.S. 809, *reinstated with modification on other grounds*, 526 F.2d 722 (8th Cir. 1975). The record is undisputed that Wolf, Block relied on subjective, indeed elusive, criteria to judge Ms. Ezold. The district court found that partners were asked to evaluate associates "on the basis of what *you* expect of an Associate at this Associate's level of experience," and "regardless of the extent of the partner's familiarity

with the associate's work." *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 751 F. Supp. 1175 (E.D. Pa. 1990). Findings of Fact ["FOF"] 46-49 (Appendix to Petition ["App."] 106a-108a). Those subjective, sometimes second-hand impressions became even more removed from the associate's actual performance as they were processed and revised through a hierarchical review by a member of Wolf, Block's Associates Committee, the Associates Committee itself, the Executive Committee and finally, if the associate was recommended to become a partner, the partnership. FOF 52-53, 56-57, 59 (App. 108a-110a). In addition, the district court noted that Wolf, Block had ongoing debates regarding its "standards" for partnership. FOF 74, 77, 84, 101 (App. 114a-115a, 117a, 119a-120a); *see also infra* note 1.

The court of appeals agreed with the district court's findings that Wolf, Block's promotion process was marked by subjectivity and lack of guidance in deciding promotion. *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 530 (3d Cir. 1992) (App. 49a). Indeed, the court of appeals found: "The differing evaluations the partners first submit to the Associates Committee are often based on hearsay and reputation. No precise theorem or specific objective criterion is employed." *Id.* at 527 (App. 41a).

The disagreement between the district court and the court of appeals arose over how a court should review an employer's subjective reasons for denying employment opportunities under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (1981 & Supp. 1993) ["Title VII"]. The district court applied Title VII's time-honored standards for judicial scrutiny and concluded that Wolf, Block's application of subjective criteria to Ms. Ezold was a pretext for discrimination and resulted in a more exacting standard for Ms. Ezold than the standard used to judge comparably- or less-talented men who were promoted to partnership at Wolf, Block. *See* FOF 72, 73, 75 (App. 114a-115a); Conclusions of Law ["COL"] 6, 11 (App. 129a-131a). The district

court reached that conclusion not by engaging in its own assessment of Ms. Ezold's credentials,[1] but rather by crediting evaluations by Wolf, Block partners that praised Ms. Ezold's legal analytical abilities and criticized the legal analytical abilities of comparably-situated male associates.[2] FOF 60-119 (App. 110a-122a). Judging credibility in this fashion has long been part of the factfinding function of the trial court. In addition, the district court found that in her partnership year, Ms. Ezold was rated "good" in legal analysis on the critical bottom line memo, the very same rating received by the comparably-situated male associates. FOF 71, 86, 94, 103, 112, 119 (App. 114a, 117a, 119a, 120a-122a); *see* App. 181a-202a. Finally, the district court found suspect Wolf, Block's determination that Ms. Ezold was not qualified for partnership in 1988 in light of the fact that the Firm "offered

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[1] The court of appeals incorrectly concluded that the district court substituted its view of appropriate partnership standards for the standards adopted by Wolf, Block by pointing to the district court's finding 121. 983 F.2d at 527-28 (App. 43a). That finding states:

> In the magnitude of its complexity, a case may have a senior partner, a younger partner, and an associate(s) assigned to the case. Accordingly, requiring the plaintiff to have the ability to handle on her own any complex litigation within the firm before she was eligible to be a partner was a pretext.

FOF 121 (App. 122a-123a). This finding did not impose the district court's view of partnership. Rather, it correctly recognized the pretextual nature of the promotion process by highlighting that, because of Wolf, Block's undisputed staffing practices, not even junior partners were called upon to demonstrate the ability to handle on their own any complex litigation within the firm.

[2] The criticism by the court of appeals that the district court failed to limit its comparison of Ms. Ezold and the successful male associates to the category of legal analytical ability suggests that the content of that subjective criterion is precise and specific. *See* 983 F.2d at 528-29 (App. 43a-47a). In fact, however, the district court's inquiry took into account the fact that legal analytical ability cannot be isolated from other individual qualities. *Cf. id.* at 535-37 (App. 61a, 63a, 66a-67a) (even the court of appeals cited general comments about how "bright" or "smart" the associate was or general comments regarding the associate's writing ability as evidence of legal analytical ability).

Ms. Ezold a partnership in one year if she took over the Domestic Relations Division of the Litigation Department," particularly where the "additional year was not for purposes of giving any additional training or experience." FOF 133-34 (App. 125a).

The court of appeals reversed the district court's finding of pretext by reevaluating the evidence and substituting its own factual findings and credibility determinations for those of the district court. It justified this usurpation of the district court's factfinding function by mandating deference to the subjective impressions of the employer:

> Were the factors Wolf considered in deciding which associates should be admitted to the partnership objective, as opposed to subjective, the conflicts in various partners' views about Ezold's legal analytical ability that this record shows might amount to no more than a conflict in the evidence that the district court as factfinder had full power to resolve.

983 F.2d at 529 (App. 47a).

Although the court of appeals denied that it was insulating from judicial review the subjective evaluations of professional employees, *see id.* at 527, 531 (App. 42a, 51a), the effect of its decision was to do just that. For example, it demanded that the district court credit the evaluations of all partners equally, even though the district court had the benefit of hearing their testimony.[3] In addition, the court of appeals rejected the reasonable inferences drawn by the district court and instead deferred

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[3] The court of appeals challenged the district court's decision not to credit criticisms by partner Fiebach which were gender-biased absent a specific finding regarding Fiebach's gender-bias. *Id.* at 532 n.22 (App. 54a). In addition, the court of appeals credited the criticisms of Ms. Ezold's legal analytical ability by partners Arbittier, Kurland and Schwartz without acknowledging what the trial court found to be gender-biased treatment of Ms. Ezold by each of these partners. *Id.* at 516-19, 532-33 537, 541, 543-47 (App. 14a-21a, 54a-55a, 68a, 77a-78a, 82a, 85a-86a, 88a-89a).

to the conclusions advocated by Wolf, Block.[4] In these ways, the court of appeals insulated from judicial scrutiny Wolf, Block's subjective impressions of Ms. Ezold.[5] The court of appeals' legitimate concern about " 'unwarranted invasion or intrusion' into matters involving professional judgments about an employee's qualifications for promotion within a profession," caused the court to deny Ms. Ezold her right to legitimate, and traditional, judicial scrutiny of Wolf, Block's decision on her promotion to partner. 983 F.2d at 527.

A deferential standard of review for subjective employment decisions of professionals has no legal foundation. It conflicts with the language of Title VII, a decision of

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[4] Without challenging the accuracy of the district court's finding that Ms. Ezold was equal to the comparably-situated male associates with regard to their ratings on legal analysis in the Associates Committee's bottom line memo for their partnership year, the court of appeals chose instead to rely on the partners' overall recommendations with regard to partnership. *Id.* at 519-20, 534-38 (App. 23a-24a, 59a-63a, 65a-69a). As an initial matter, focusing on the overall rating violates the court of appeals' admonition to focus only on the articulated reason for Ms. Ezold's rejection, deficiency in her legal analysis. *Id.* at 528-29 (App. 43a-46a). In addition, several of the partners who criticized the legal analytical abilities of the successful male associates nonetheless recommended them for partnership. *Id.* at 534, 536-37 (App. 59a, 63a, 67a-68a).

Moreover, the court of appeals never addressed the district court's finding that the Firm was satisfied with Ms. Ezold's credentials in 1988 when it offered her the partnership in Domestic Relations.

[5] The magnitude of the hands-off approach adopted by the court of appeals is demonstrated by the court's refusal to review Wolf, Block's evaluations of Ms. Ezold, regardless of their accuracy: "The firm may have been wrong in its perception of Ezold's legal analytic ability and, if so, its decision to pass over Ezold would be unfair, but that is not for us to judge." *Id.* at 533 (App. 57a); *see id.* at 531, 542 (App. 51a-52a, 80a). That pronouncement is flatly contradicted by this Court: "that a court may think that the employer misjudged the qualifications of the applicants does not in itself expose him to Title VII liability, although this may be probative of whether the employer's reasons are pretexts for discrimination." *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 259 (1981).

this Court, and the decisions from the courts of appeals of nine other circuits.

Title VII provides no support for exempting subjective decisions from judicial review. Indeed, Congress delegated to the federal courts the power to enforce Title VII's mandate that employers are prohibited from refusing to promote their employees because of sex. 42 U.S.C. §§ 2000e-2(a), 2000e-5(f) (1981 & Supp. 1993). The court below subverts that delegation by insulating from judicial review employment decisions based on subjective criteria.

In addition, the decisions of this Court provide no support for treating subjective decisions deferentially. In 1988, this Court faced an analogous question: whether to insulate from the application of disparate impact scrutiny the subjective decisions of employers. *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977 (1988). The employer in *Watson* argued that the exemption from disparate impact scrutiny was justified because of the availability of scrutiny under conventional disparate treatment theory. *Id.* at 989. This Court refused to immunize subjective decisions from judicial review under the disparate impact theory, fearing that employers would insulate themselves from liability under that theory by making their employment decisions based on at least one subjective factor. *Id.* at 989-90.

The decision of the court of appeals here goes a step further than even the employer in *Watson*. It insulates from the application of disparate treatment scrutiny the subjective decisions of Wolf, Block. Just as it rejected the proposed exemption for subjective decisionmaking in *Watson*, this Court should correct the court of appeals' departure from the law of Title VII.

To the extent that other courts of appeals have recognized any distinction between judicial scrutiny of subjective versus objective employment criteria, they have acknowledged that the more elusive and less exacting nature of subjective criteria make them a ready vehicle for

camouflaging illegal discrimination—both conscious and unconscious. Indeed, the courts of appeals for nine circuits have required even more exacting scrutiny of subjective criteria in recognition of this practical reality. *See, e.g., Jauregui v. City of Glendale*, 852 F.2d 1128, 1136 (9th Cir. 1988) ("[T]his circuit has cautioned 'that subjective practices are particularly susceptible to discriminatory abuse and should be closely scrutinized.' ") (quoting *Atonio v. Wards Cove Packing Co.*, 810 F.2d 1477, 1481 (9th Cir. 1987) (en banc), *cert. denied*, 485 U.S. 989 (1988)); *Miles v. M.N.C. Corp.*, 750 F.2d 867, 871 (11th Cir. 1985) ("[S]ubjective evaluations involving white supervisors provide a ready mechanism for racial discrimination."); *Grano v. Department of Dev.*, 699 F.2d 836, 837 (6th Cir. 1983) (per curiam) ("[T]he legitimacy of the articulated reason for the employment decision is subject to particularly close scrutiny where the evaluation is subjective and the evaluators themselves are not members of the protected minority."); *Royal v. Missouri Hwy. & Transp. Comm'n*, 655 F.2d 159, 164 (8th Cir. 1981) ("When the evaluation is in any degree subjective and when the evaluators themselves are not members of the protected minority, the legitimacy and nondiscriminatory basis of the articulated reason for the decision should be subject to particularly close scrutiny by the trial judge."); *Davis v. Califano*, 613 F.2d 957, 965 (D.C. Cir. 1979) ("Appellee's promotion procedures are highly suspect and must be closely scrutinized because of their capacity for masking unlawful bias."); *Stewart v. General Motors Corp.*, 542 F.2d 445, 450 (7th Cir. 1976), *cert. denied*, 433 U.S. 919 (1977) ("While some subjectivity is inevitable in filling jobs of an executive character, the total lack of objective standards . . . could only reinforce the prejudices, unconscious or not, which Congress in Title VII sought to eradicate as a basis for employment."); *Barnett v. W.T. Grant Co.*, 518 F.2d 543, 550 (4th Cir. 1975) ("Nonobjective hiring standards are always suspect because of their capacity for masking racial basis [sic]."); *Muller v. United States Steel Corp.*, 509 F.2d 923, 927-

28 (10th Cir.), *cert. denied,* 423 U.S. 825 (1975) ("Personal and subjective criteria encourage and foster discrimination."); *Rowe v. General Motors Corp.,* 457 F.2d 348, 359 (5th Cir. 1972) ("All we do today is recognize that promotion/transfer procedures which depend almost entirely upon the subjective evaluation and favorable recommendation of the immediate foreman are a ready mechanism for discrimination against Blacks much of which can be covertly concealed. . . .").

Without distinguishing or analyzing this multitude of cases calling for more exacting scrutiny of the subjective decisions concerning a candidate from an underrepresented group when evaluated by members of the majority group, the court below created a contrary standard requiring more deferential trial court examination of the subjective impressions of Ms. Ezold by the predominantly male law partnership.[6] This standard of deferential scrutiny will encourage employers to rely even more heavily on subjective criteria to avoid traditional review. This is ironic since subjective evaluations lend themselves more easily to intentional and unintentional personal biases. More importantly, this standard will severely diminish the ability of women and other underrepresented groups to demonstrate pretextual discrimination where employers rely on subjective reasons for denying employment opportunities—a common occurrence for upper-level employment. This departure from the holding of this Court and the holdings of other courts of appeals requires this Court's review.

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[6] FOF 132 (App. 124a). Only five of the Firm's 107 partners were female. App. 180a. Moreover, in the year Ms. Ezold was considered for partner, only one female partner was on the ten-person Associates Committee and the Executive Committee was all male. App. 178a-179a.

II. THE DECISION BELOW CONTRAVENES THE LAW OF TITLE VII AND THE GLASS CEILING ACT BY DISREGARDING THE ATTITUDINAL BARRIERS AND ORGANIZATIONAL BIAS HINDERING THE ADVANCEMENT OF UNDERREPRESENTED GROUPS.

Many of the obstacles impeding Ms. Ezold's progress at Wolf, Block have been identified as classic barriers hindering the advancement of underrepresented groups. The district court recognized these barriers as evidence of gender bias. This Court has emphasized the critical importance of weighing, with all the other evidence, the types of attitudinal and organizational bias discovered by the district court because evidence that the employer's reason for denial of an employment opportunity is unworthy of credence does not alone require the factfinder to conclude that the reason was a pretext for discrimination. *St. Mary's Honor Ctr. v. Hicks,* 61 U.S.L.W. 4782, 4784 (June 22, 1993). By contrast, the court of appeals here required each instance of discriminatory treatment to establish on its own that the Firm's decision to deny Ms. Ezold promotion to partner was discriminatory, 983 F.2d at 539-47 (App. 73a-93a). Viewing each instance of sex bias in isolation, the court of appeals reversed the district court's findings of evidentiary value in these incidents, concluding that there was "no evidence of sex discrimination here." 983 F.2d at 547 (App. 93a).

Among the barriers identified by the district court as impeding Ms. Ezold's progress at Wolf, Block was the discriminatory presumption against her, originating even before she was hired, when the Chairman of the Litigation Department told her "it would not be easy for her at Wolf, Block because . . . [among other things] she was a woman." FOF 18 (App. 101a). Another partner reinforced the evidence that the Firm had an unduly negative perception of Ms. Ezold, by first praising her work and then stating: "I sense some old *perceptions*—baggage —which should be revisited," and Ms. Ezold needs " '[b]etter p.r. [public relations].' " FOF 65 (App. 112a).

See FOF 33 (App. 104a). Such findings represent classic evidence of sex bias in the workplace.

The American Bar Association's Commission on Women cited this differential presumption, that "women must prove their competence, while men must prove their incompetence" as one of the "[a]ttitudinal barriers . . . which lead to . . . rejection [of women] in the workplace." *ABA Report, supra,* at 5. Indeed, "[w]omen reported that they are often treated with a presumption of incompetence, to be overcome only by flawless performance, whereas they see men attorneys treated with a presumption of competence overcome only after numerous significant mistakes." *Id.* at 12; *see also* U.S. Dep't of Labor, *Pipelines of Progress, An Update on the Glass Ceiling Initiative* 35 (1992) (Women professionals reported "that they were not held to the same performance measures as men and believed that they had to work twice as hard.").

This differential response to male deficiencies was identified by the district court as a factor that infected Wolf, Block's evaluation process. Indeed, criticisms of male employees were sometimes accompanied by a statement excusing the behavior or suggesting that the deficiency was not determinative. FOF 81, 90, 96, 107, 108, 116, 117 (App. 116a, 118a-120a, 122a). For example, despite skepticism about how smart one male associate was, the evaluating partner said, "[n]evertheless, I think he has potential." FOF 90 (App. 118a). In addition, after very critically evaluating a male associate, one partner wrote: "I am giving him a second chance." FOF 116 (App. 122a). By contrast, the court of appeals found criticisms of Ms. Ezold to be iron-clad judgments of her ability despite recognition by several partners that the evaluations were unfair in light of the presumption against her when she was hired and the "inferior" work assignments she was given. FOF 30, 32-38 (App. 103a-105a).

The district court also singled out as an independent barrier to Ms. Ezold's progress at the Firm the informal

and discriminatory assignment procedures at Wolf, Block [7] that resulted in the assignment to Ms. Ezold of "inferior" work opportunities. FOF 32-37, 40, 42, 66, 68 (App. 103a-106a, 112a-113a). The pervasiveness of this informal procedure was evident where, despite the fact that Ms. Ezold was the only associate to volunteer to work on a preliminary injunction and was therefore initially assigned to the case, "within an hour Mr. Arbittier, without explanation, had reassigned it to a male associate." FOF 29 (App. 102a-103a).[8]

Discriminatory assignment policies are another notorious barrier to women's advancement in the private practice of law. *ABA Report*, *supra*, at 11 ("Witnesses also reported that women are receiving different types of case assignments from those given to men, and are sometimes steered away from major litigation [and] commercial matters . . . ."). *See also Glass Ceiling Initiative*, *supra*, at 5 ("[C]areer enhancing assignments . . . were often not as available to minorities and women.").

Moreover, the district court found that Wolf, Block's assignment process resulted in Ms. Ezold working on smaller matters with only a limited number of partners, despite the Firm's commitment " 'to try to give her the assignments that will enable her to attempt to build a place for herself.' " FOF 35-40 (App. 104a-105a); *see*

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[7] The court of appeals determined that the discrimination Ms. Ezold faced with regard to assignments at Wolf, Block "may have" resulted from her academic credentials, rather than sex discrimination. 983 F.2d at 540 (App. 75a). The court reached this conclusion without disturbing the district court's findings that Seymour Kurland, the partner in charge of assignments, told Ms. Ezold when she was hired that "she did not fit the Wolf, Block mold since she was a woman, had not attended an Ivy League school, and had not been on law review" and that partner Schwartz told Ms. Ezold that the Firm did not want to hear her view that a case assignment problem occurred because she was a woman. 983 F.2d at 541, 545 (App. 77a, 86a).

[8] The court of appeals rejected the discriminatory impact of this episode by crediting the trial testimony of partner Arbittier giving a gender-neutral reason for reassigning the case for which only Ms. Ezold had volunteered. 983 F.2d at 541 (App. 77a).

FOF 24-27, 30 (App. 102a-103a). This more restricted exposure classically impedes the ability of members of underrepresented groups to succeed. *See Glass Ceiling Initiative, supra,* at 18, 21-22 (women denied exposure and mentoring opportunities were impeded in their career advancement).

Another example of discriminatory treatment visited upon Ms. Ezold occurred after the Firm rejected her bid for partner in the litigation department. At that point, Wolf, Block attempted to steer Ms. Ezold into domestic relations practice, an area that the Firm regarded as less complex than commercial practice. FOF 137-38 (App. 125a-126a); *see* FOF 41 (App. 105a-106a). This practice of steering women away from prestigious practice areas also traditionally accompanies women's employment. *See Glass Ceiling Initiative, supra,* at 16.

Additionally, in reviewing the evidence supporting a finding of discrimination, the district court appropriately noted that Wolf, Block was a "predominantly male partnership."[9] The almost non-existent number of women partners decisionmakers may legitimately influence the factfinder to find discrimination. Indeed, this Court in *Hicks* suggested the converse—that the more representative number of minority employees, including minority decisionmakers, was an appropriate consideration leading the factfinder in that case to find no discrimination. *St. Mary's Honor Ctr. v. Hicks*, 61 U.S.L.W. at 4784 n.2. The court of appeals, by contrast, refused to allow the statistically few women partners to influence the factfinder, ruling such disparity to be neither "probative" nor "material." 983 F.2d at 543 (App. 81a-82a).

Moreover, such significant underrepresentation of women should provoke a reassessment of practices and policies. *Glass Ceiling Initiative, supra,* at 15, 22 (citing companies that fail to audit and oversee their equal employment opportunity progress). Far from prompting appropriate self-examination, the court of appeals' response encourages complacency.

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[9] *See supra* note 6.

Finally, the district court found that several of the firm's standards were infected with sex stereotyping. For example, the court found:

> The plaintiff was criticized for being "very demanding" and was expected by some members of the Firm to be nonassertive and acquiescent to the predominately male partnership. Her failure to accept this role was a factor which resulted in her not being promoted to partner. However several male associates who had been evaluated negatively for *lacking* sufficient assertiveness in their demeanor *were* made partners.

FOF 132 (App. 124a-125a);[10] *see* FOF 120 (App. 122a); COL 12 (App. 131a). The potential for stereotyping was exacerbated by Wolf, Block's process of requiring evaluations by all partners of all associates, regardless of their first-hand knowledge of that associate's work. The court of appeals condoned the process of evaluating associates where the partner "had little contact and perhaps knew nothing about the associate beyond the associate's general reputation" because it "applied equally to female and male associates." 983 F.2d at 532 (App. 53a). The court of appeals failed to acknowledge that despite the purportedly equal application, that policy would likely have a more negative effect on the evaluations of women in the context of a predominantly male partnership, where women lawyers, particularly ones deemed successful enough to be granted partnership, were unusual. *See* App. 180a. As the district court cautioned in *Hopkins v. Price Waterhouse,* 618 F. Supp. 1109, 1119 (D.D.C. 1985), *aff'd in part, rev'd in part,* 825 F.2d 458 (D.C. Cir. 1987), *aff'd in part, rev'd in part,* 490 U.S. 228 (1989):

> The evidence indicates that Price Waterhouse should have been aware that women being evaluated by male

[10] The court of appeals dismissed the impact of that finding by crediting the trial testimony of partner Rosoff that "he disregarded the criticisms of her handling of administrative matters from earlier years as 'ancient history.'" 983 F.2d at 544 (App. 85a).

> partners might well be victims of discriminatory stereotypes. Yet the firm made no efforts to make partners sensitive to the dangers, to discourage comments tainted by sexism, or to investigate comments to determine whether they were influenced by stereotypes.

See, e.g., Mary F. Radford, *Sex Stereotyping and the Promotion of Women to Positions of Power*, 41 Hastings L.J. 471, 486-503 (1990) (describing how sex stereotyping creates subtle obstacles to women's advancement); Nadine Taub, *Keeping Women in Their Place: Stereotyping Per Se as a Form of Employment Discrimination*, 21 B.C.L. Rev. 345, 353-59 (1980) (identifying social science data supporting prevalence of sex stereotyping).

The court of appeals refused to acknowledge the gender-based nature and the discriminatory impact of each of these classic barriers to advancement of women by, once again, usurping the valid factfinding function traditionally delegated to the district court. Indeed, the court of appeals dismissed evidence of many of these classic barriers by crediting the gender-neutral explanations offered in the trial testimony of the Firm's partners. *See supra* notes 8 & 10. Moreover, the court of appeals either rejected [11]

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[11] The district court found a relationship between the initial negative presumption regarding Ms. Ezold, her failure to get career-enhancing assignments, and critical evaluations of her work performance resulting in her denial of partnership. For example, the district court cited to comments by Mr. Magarity:

> [T]he perception that she is not able to grasp complex issues or handle complex cases . . . appears to be a product of how Sy Kurland viewed Nancy's role when she was initially hired. For the first few years Sy would only assign Nancy to non-complex matters, yet, at evaluation time, Sy, and some other partners would qualify their evaluations by saying that Nancy does not work on complex matters. Nancy was literally trapped in a Catch-22. The Chairman of the Litigation Department would not assign her to complex cases, yet she received negative evaluations for not working on complex cases.

FOF 33 (App. 103a-104a). *See* FOF 32, 34, 35, 37, 42, 66, 68 (App. 103a-106a, 112a-113a). Moreover, the district court acknowledged

or minimized[12] the impact of these classic barriers despite record evidence to support impact. *See supra* note 7. For example, the court of appeals dismissed the impact that partner Kurland's sexist remarks[13] had on Ms. Ezold's partnership determination, noting that Mr. Kurland left the Firm the year before Ms. Ezold was considered for partner. 983 F.2d at 545, 547 (App. 87a, 91a). Such a dismissal cannot stand, however, where even the court of appeals credited criticisms by Mr. Kurland of Ms. Ezold's legal analytical ability in supporting its decision to reverse the district court's finding of pretext. 983 F.2d at 518, 532 (App. 18a, 55a). Once again, the court of appeals reversed the well-grounded

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that the informal and discriminatory assignment process resulted in Ms. Ezold working on smaller matters and with only a limited number of partners—a factor that hurt her chances for partnership at the Firm. FOF 24-27, 30, 39-40 (App. 102a-103a, 105a). Without disputing this record evidence, however, the court of appeals simply reversed the district court's findings that Wolf, Block's presumption against Ms. Ezold when she was hired and the discriminatory assignment process affected the Firm's decision with regard to partnership. 983 F.2d at 541, 542, 545, 547 (App. 76a-77a, 79a-80a, 87a-88a, 91a-92a).

[12] The district court found that Wolf, Block's reaction to legitimate women's issues was not gender-neutral. For example, Ms. Ezold was viewed negatively for criticizing the Firm's treatment of its paralegals, all of whom were female. FOF 31, 128-30 (App. 103a, 124a); COL 12 (App. 131a). Mr. Fiebach, however, was not criticized for raising the issue of part-time attorneys, "'well known to be a women's issue.'" FOF 130 (App. 124a). Moreover, the district court found that partner Schwartz negatively evaluated Ms. Ezold with: "'her judgment can be clouded by over sensitivity to what she misperceives as women's issues.'" FOF 128 (App. 124a); *see* FOF 127, 122 (App. 123a); COL 12 (App. 131a). The court of appeals minimized the impact of the Firm's discriminatory and defensive response to Ms. Ezold's discussion of women's issues, finding such evidence to be "of marginal value in supporting the district court's finding of pretext." 983 F.2d at 543 (App. 83a).

[13] The court of appeals refused even to acknowledge the sex-biased nature of Mr. Kurland's comments, referring to them in more sex-neutral terms: "crude and unprofessional," "reflect[ing] unfavorably on Kurland's personality or his views" and "inappropriate." 983 F.2d at 547 (App. 91a-92a).

findings and inferences of the district court by deferring to the subjective opinions of Wolf, Block. *Id.* at 547 n.38. Such deference, particularly by an appellate court, runs contrary to the law of Title VII and the Glass Ceiling Act of 1991.

Congress' efforts to equalize employment opportunity began almost three decades ago with the passage of Title VII. From that time, Title VII has prohibited discrimination because of race, color, religion, sex, or national origin at all levels of employment, not just entry levels. Indeed, this Court has interpreted Title VII to prohibit promotion to partnership in private law firms or professional accounting firms on the basis of sex. *Price Waterhouse v. Hopkins,* 490 U.S. 228 (1989); *Hishon v. King & Spaulding,* 467 U.S. 69 (1984). The decision below will further delay the realization of equal employment opportunity for all by disregarding the discriminatory barriers that impede the advancement of women and other underrepresented groups to upper-level employment.

The role of the factfinder in discerning employment discrimination stemming from attitudinal and organizational bias was emphasized in *St. Mary's Honor Ctr. v. Hicks,* 61 U.S.L.W. at 4784. In the case at bar, the court of appeals reversed the findings of the factfinder relating to both the pretextual nature of the employer's proffered explanation for the denial of promotion, and the evidence of sex bias in the attitudes of participating partners and in the promotion process itself. This reversal was supported only by unwarranted and improper deference to the employer, not by legitimate appellate review. Indeed, this Court in *Hicks* firmly established that the decision regarding whether discrimination was proved is a decision to be made by the finder of fact:

> That the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the plaintiff's proffered reason of race is correct. That remains a question for the factfinder to answer, subject, of course, to appellate review—which should be conducted . . . under the 'clearly

erroneous' standard of Federal Rule of Civil Procedure 52(a), *see, e.g., Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985).

St. Mary's Honor Ctr. v. Hicks, 61 U.S.L.W. at 4788. The decision of the court of appeals directly contradicts those standards of appellate review appropriate in Title VII cases.

Finally, in recognition of the artificial barriers that impede the advancement of women and minorities in the workplace, Congress passed the Glass Ceiling Act of 1991 [14] to identify and remove such barriers. That Act reflects Congress' commitment to eliminate the discriminatory underrepresentation of women and other groups at the upper levels of employment, a commitment which is undercut by the deferential standard of judicial review mandated by the decision below.

CONCLUSION

The decision below represents a disturbing departure from settled Title VII law that threatens to perpetuate discrimination against women and minorities in upper-level employment in America. *Amici*, therefore, respectfully urge this Court to grant the writ sought by petitioner.

Respectfully submitted,

LINDA J. WHARTON
Counsel of Record
PAMELA L. PERRY
SUSAN FRIETSCHE
CAROL E. TRACY
WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 401
Philadelphia, PA 19107
(215) 928-9801

SETH KREIMER
3400 Chestnut Street
Philadelphia, PA 19104
Attorneys for Amici Curiae

[14] Pub. L. No. 102-166, tit. II, 105 Stat. 1081.

APPENDIX

APPENDIX

INTEREST OF *AMICI CURIAE* ORGANIZATIONS

The WOMEN'S LAW PROJECT (WLP) is a nonprofit, feminist legal advocacy organization located in Philadelphia. Founded in 1974, WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public education, and individual counseling. During the past nineteen years of its existence, WLP's activities have included extensive work in the area of sex discrimination in employment.

WLP has a strong interest in the eradication of discrimination against women in the workplace and the availability of strong and effective remedies under Title VII of the Civil Rights Act of 1964, as amended. The Women's Law Project believes that the decision below will have a devastating impact on the ability of women and other underrepresented groups to demonstrate illegal bias in professional employment decisions.

The AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW) is a national organization dedicated to working for education and equity for women and girls. AAUW's 100,000 members are committed to achieving equal opportunities and fair treatment for women in the workplace.

The AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, PENNSYLVANIA DIVISION (AAUW-PA), is an affiliate of AAUW, a national nonprofit organization of graduates promoting equity for women, education and self-development over the life span, and positive societal change. Pennsylvania has seventy-six branches statewide with a membership of 6,500.

AAUW-PA recognizes that equal access to opportunity, pay equity, and the elimination of workplace gender discrimination, as equity issues, are key to the economic survival of women. AAUW-PA joins with the plaintiff in

Ezold v. Wolf, Block, Schorr and Solis-Cohen in seeking the elimination of gender barriers to professional advancement.

The AAUW LEGAL ADVOCACY FUND provides funding and a support system for women seeking judicial redress for sex discrimination in colleges and universities. Since 1981, the AAUW Legal Advocacy Fund has supported twenty-two sex discrimination lawsuits against institutions of higher education.

The AMERICAN MEDICAL WOMEN'S ASSOCIATION, INC. (AMWA) is a nonprofit organization of 13,000 women physicians and medical students, founded in 1915 and representing women in all specialties of medicine and diverse career roles. One of AMWA's primary missions is to promote career development for women in medicine. AMWA strongly opposes gender discrimination which interferes with an individual's ability to work effectively within her/his profession.

The ASIAN AMERICAN BAR ASSOCIATION OF NEW YORK (AABANY) is a professional membership organization of Asian American and other attorneys concerned with issues affecting the Asian American community, including anti-Asian violence and civil rights. AABANY has sought not only to encourage the professional growth of its members but also to serve the Asian American community through advocacy.

Founded in 1974, the ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (AALDEF) is a civil rights organization that addresses critical issues facing Asian Americans through community education, advocacy, and litigation. Program priorities for this year are employment and labor rights, voting rights, immigrant rights, the elimination of anti-Asian violence and environmental racism, and redress for Japanese Americans interned during World War II. AALDEF supports equal opportunity for all including individuals seeking employment or promotions within law firms.

The ASSOCIATION OF BLACK WOMEN LAWYERS OF NEW JERSEY (ABWL) was organized in September, 1975 by a group of Black women lawyers, law school graduates and law school students determined to establish a meaningful vehicle of communication and support among minority women in law. The goal was to devise a means of encouraging more minority women to enter the legal field and to enhance the quality of legal services rendered to the minority community throughout the State of New Jersey.

To this end, the Association has been involved in action directed toward preserving law school policies which encourage and aid minority admissions into the legal profession. The Association also encourages and endorses employment practices offering equal access to the legal arena and supports the provision of legal services to the unrepresented and underrepresented.

ABWL seeks to accomplish many purposes, including: providing a forum for discussion and dissemination of legal information on matters of interest to Black and minority attorneys in the legal profession; fostering better communication, cooperation and understanding with the legal profession; assisting charitable and educational pursuits beneficial to the legal community and the community at large; encouraging members to participate in community service organizations; and providing members with information and counseling concerning career opportunities in the legal profession. Currently there are over 100 ABWL members.

ABWL is interested in *Ezold v. Wolf, Block, Schorr and Solis-Cohen* because the Association believes that the outcome of this case will have a significant and real impact on career options for our members. Furthermore, the Association realizes that concerted action on the part of organizations such as ours is needed to orchestrate meaningful changes in the legal profession throughout this nation.

CALIFORNIA WOMEN LAWYERS (CWL) is one of the largest women's bar associations in the nation, representing the interests of over 30,000 women lawyers. CWL's mission is to promote the advancement of women and the achievement of gender parity. To that end, CWL has authored sexual harassment policy guidelines for the workplace which have been endorsed by numerous law firms and bar associations throughout California.

The CALIFORNIA WOMEN'S LAW CENTER was established in 1989 as the first Law Center in Southern California solely devoted to addressing the civil rights of women and girls. The Law Center has identified the following priorities for its work: Sex Discrimination in Employment, Education and Health, Reproductive Freedom, Child Care, Family Law and Domestic Violence.

Sex discrimination against women in the workplace is a common occurrence which hinders the full career development and advancement of women. The Law Center is deeply concerned about the "glass ceiling" effect on women working in professional settings. The outcome of this case will have important repercussions for the women and girls of California and is thus clearly within the priority concerns of the Law Center. The California Women's Law Center, therefore, has a significant interest in Ms. Ezold's petition as well as extensive background and expertise in the issues presented to this Court.

The CENTER FOR ECONOMIC OPTIONS is a nonprofit, community-based organization that is committed to improving the economic position and quality of life of West Virginia women. We work with women in transition with a special commitment to low-income and minority women. Our work is accomplished through direct service action, education, and advocacy for social and economic justice.

We are pleased to serve as *amicus* in this important litigation. As an organization that addresses a variety of employment-related issues for women, including sexual

discrimination, sexual harassment and pay equity, we believe that the decision below in this case will establish a dangerous precedent for the enforcement of Title VII in the context of professional employment.

The CENTER FOR WOMEN POLICY STUDIES (CWPS) is a nonprofit feminist organization founded in 1972 dedicated to research and advocacy to further women's rights. One of the Center's priorities is the achievement of equity in the workplace and the elimination of the "glass ceiling" for women. To that end, CWPS supports a broad and effective interpretation of Title VII of the Civil Rights Act of 1964, as amended.

The COALITION OF LABOR UNION WOMEN (CLUW) is an organization of union women and men, working within the framework of the labor movement to attain its four major goals: organizing the unorganized, pursuing affirmative action in the workplace, encouraging greater participation of women in their unions, and working for greater involvement of women in legislative and political action activities.

CLUW, founded in March 1974, implements its programs through more than sixty-four chapters located across the country. CLUW acts as an advocacy organization for the more than 7.5 million union women in the country.

Over its twenty-year history, CLUW has acquired a record and reputation for fighting to improve the status of women and to eliminate the barriers that impede women's progress. Eliminating the "glass ceiling" wherever it exists is one of CLUW's major priorities.

The COLORADO WOMEN'S BAR ASSOCIATION (CWBA) is a nonprofit organization with approximately 750 members. Membership is open to attorneys and non-attorneys, regardless of sex, race, religion, national origin or sexual orientation. The CWBA was formed to promote the highest standards of the legal profession, to advance justice, to promote, advance and protect the in-

terests and welfare of women, and to pursue these goals through appropriate legal, social and political action.

The primary interest of *amicus* CWBA is the impact the decision below will have on the ability of women to demonstrate bias in professional employment decisions.

The EMPLOYMENT LAW CENTER (ELC), A PROJECT OF THE LEGAL AID SOCIETY OF SAN FRANCISCO, is a private, nonprofit, public interest law firm that represents workers in cases involving employment discrimination and issues affecting workplace rights. The ELC specializes in, among other areas, sex discrimination.

The ELC represented Lillian Garland in *California Federal Savings & Loan v. Guerra*, 479 U.S. 272 (1987), which upheld Cal. Gov't Code § 12945(b)(2), a state law which provides up to four months of pregnancy disability leave and a right to return to the same or similar job.

The ELC also represented Queen Foster in *Johnson Controls, Inc. v. Fair Employment & Housing Commission*, 267 Cal. Rptr. 158 (1990), where the Court of Appeals ruled that the employer's gender-based exclusionary "fetal protection" policy violated the Fair Employment and Housing Act. The ELC also appeared as *amicus curiae* in the United States Supreme Court in *International Union, UAW v. Johnson Controls*, 111 S. Ct. 1196 (1991), in which the Court held that the employer's "fetal protection" policy constituted sex discrimination prohibited by Title VII of the Civil Rights Act of 1964.

The ELC has participated as *amicus curiae* in many sex discrimination cases before the United States Supreme Court, including *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) and *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986).

EQUAL RIGHTS ADVOCATES, INC. (ERA) is a San Francisco-based public interest legal and educational

corporation dedicated to working through the legal system to secure equality for women. ERA has a long history of interest, activism, and advocacy in all areas of the law which affect equality between the sexes. ERA has been particularly concerned with gender equality in the work force because economic independence is fundamental to women's ability to gain equality in other contexts. If the dream of equality is ever to be realized, elimination of gender-based double standards, which require women to be better qualified than men in order to be promoted, is essential.

The FEDERALLY EMPLOYED WOMEN LEGAL AND EDUCATION FUND (FEW-LEF) is a nonprofit organization, incorporated in 1977 under the laws of the District of Columbia. It was established to undertake legal, educational and research activities in order to eliminate unlawful discrimination in the federal government on the basis of race, sex, age, religion, national origin, handicap, and lawful political affiliation. The Board of Directors consists of EEO officials, federal employees, plaintiffs in EEO suits, attorneys who represent EEO plaintiffs and others interested in these issues.

We know, often from firsthand experience, how difficult it is to prevail in these cases at the district court level. To allow a defendant what is in effect a new trial at the appellate level is disastrous for plaintiffs. It encourages lengthy, expensive appeals which defendants are better able to outlast than plaintiffs.

Like Nancy Ezold, many women in the federal service are subjected to different, more difficult criteria for success than are their male counterparts. These federal women, many of whom we have taught about their rights or supplied with counsel, will be affected by the outcome of this case.

The FEDERATION OF ORGANIZATIONS FOR PROFESSIONAL WOMEN (FOPW) is a federation of thirty professional women's organizations, including the

Association for Women in Science, the Association for Women in Education, the American Psychiatric Association, the Association for Women Veterinarians, the Association of Women Geoscientists, and the American Library Association's Committee on the Status of Women in Librarianships. FOPW was founded in 1972 to work together to study the issues that impact the careers of professional women, to educate professional women on those issues and to provide mutual support. FOPW is particularly interested in gender discrimination and sexual harassment issues, because we have found that aside from severe illness, the experience of discrimination or harassment has the single most devastating effect on a professional woman's career. Inequity in the workplace that is based on gender should not be tolerated in an open, democratic society. Equal contribution must be equally rewarded.

Founded in 1987, the FEMINIST MAJORITY FOUNDATION is a 501(c)(3) nonprofit national organization with offices in Arlington, Virginia and Los Angeles, California. The Feminist Majority Foundation seeks to empower women through research, education, and action. As a part of its *Empowering Women* report series, the Feminist Majority Foundation is currently completing a report on *Empowering Women in Law*. The Foundation is committed to shattering all obstacles to women's advancement in the legal profession, and, accordingly, supports the case made by Nancy O'Mara Ezold.

The FLORIDA ASSOCIATION FOR WOMEN LAWYERS (FAWL) is a large, voluntary statewide association of attorneys of both genders involved in all areas of the law. Its purposes include improvement of the administration of justice and the promotion of women's legal rights, and the elimination of abuses that diminish the integrity of the individual as well as the family.

FAWL is vitally interested in this case, not only because of the impact that it has on women lawyers, who

comprise the majority of FAWL's members, but also because of its negative impact on the law of employment discrimination. We believe that the law established by the decision of the court of appeals would present an insurmountable obstacle to many valid cases of employment discrimination.

FAWL and its chapters have been involved as *amici curiae* in cases in the Florida appellate courts and Supreme Court, as well as the federal courts. These cases have involved issues as varied as family violence, child abuse, the right to choice in personal and family matters, sexual harassment, discrimination in jury selection, and fairness in the administration of justice.

The GEORGIA ASSOCIATION FOR WOMEN LAWYERS is a nonprofit association which promotes the welfare and interest of women lawyers, and informs and educates lawyers in Georgia on matters pertaining to the professional interest and status of women lawyers. The Association has served Georgia since 1928 and includes among its members over 600 lawyers in all areas of practice. The Association also works closely with other organizations which promote the interests of women professionals.

The Georgia Association for Women Lawyers is keenly interested in the development of the law applied in sex discrimination cases which invoke the application of subjective standards and which involve claims for admission to professional partnerships. The ability of women to progress in professional firms unimpeded by impermissible discrimination is of utmost concern to our members. The development of the legal standards which will be applied to identify subtle, but invidious, discrimination which serves as a "glass ceiling" to prevent women from developing their full potential in the workplace is vital and merits the Court's attention.

The HISPANIC NATIONAL BAR ASSOCIATION (HNBA) is an incorporated, nonprofit, national associa-

tion of Hispanic attorneys, judges, law professors, and law students. The HNBA has been the principal force behind the increased representation of Hispanics in all sectors of the legal profession and has served as the legal voice of Hispanics for over twenty years.

Founded in California in 1972 as La Raza National Lawyers Association, membership was initially drawn from the western and southwestern parts of the country. In 1980 its name was changed to the Hispanic National Bar Association to reflect the increasingly broad-based national membership.

The HNBA's primary foci are legal education (through the Council on Legal Education Opportunity), judicial selection, and civil rights issues. Equal employment opportunity for all without regard to race, color, ethnicity, national origin, gender, religion, disability, age and sexual orientation is central to our mission to advance the cause of justice in the United States.

The HISPANIC WOMEN'S COUNCIL is a 501(c)(3) nonprofit organization that was founded in 1973. The Hispanic Women's Council is dedicated to improving the status of Hispanic women through education, career and leadership development activities. The Council's four major areas of program activities are educational opportunity, leadership and career development, youth outreach, and communication and advocacy.

The JAPANESE AMERICAN CITIZENS LEAGUE (JACL) is the largest Asian American civil and human rights organization in the United States. Established as a nonprofit organization in 1929, JACL has participated, either as a party or as *amicus curiae*, in various legal actions which have challenged racial discrimination against Asian Americans. One of JACL's primary missions is to secure equal opportunity for Asian Americans and to fight discrimination in all forms.

The MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF) is a na-

tional civil rights organization founded in 1967 and headquartered in Los Angeles. Its principal objective is to secure and to protect, through litigation and education, the civil rights of Latinos living in the United States. Much of MALDEF's advocacy is directed at eliminating the barriers to equal employment opportunity for Latinos, particularly in upper-level employment from which Latinos usually are altogether excluded.

The NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION (NAPABA) is a nationwide, nonprofit, nonpartisan organization of Asian Pacific American attorneys, judges and law students. Founded in 1989, NAPABA has over 3000 members and is dedicated to serving the needs of Asian Pacific American attorneys and their communities. Among its primary missions are the elimination of employment discrimination and the advancement of Asian Pacific American attorneys in the legal profession.

The NATIONAL ASSOCIATION FOR FEMALE EXECUTIVES (NAFE), headquartered in New York City, is a twenty-year-old professional organization that has a current United States membership of 247,000 women in professional, managerial, and entrepreneurial employment. It is the largest and the fastest-growing business women's organization in the country; its members are concentrated in the southeast, midwest, southwest, and upper central states, and represent a broad racial and ethnic cross section of women between the ages of twenty-five and fifty-five. NAFE was founded for the purpose of helping women to achieve financial independence and career success. It has recently become involved as an advocate in issues relating to the "glass ceiling," sexual harassment, health equity, and domestic violence. Responding to the business and financial needs of its members and its 600 regional networks, NAFE provides venture capital investment in women-owned businesses, career materials, seminars and conferences, job hotlines, and numerous other financial services for its members.

The NATIONAL ASSOCIATION FOR GIRLS AND WOMEN IN SPORT (NAGWS) was founded in 1899 and is one of six associations which form the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) headquartered in Reston, Virginia. At the present time there are approximately 7500 members of NAGWS who are primarily physical education teachers and or coaches of girls' and women's athletic teams.

The mission of NAGWS is to ensure gender equity for girls and women in sport. In order to accomplish this mission, the membership has directed the organization's advocacy efforts to ensure the implementation of Title IX in the schools and colleges and to increase the number of women in leadership roles and coaching positions.

NAGWS supports the efforts of Nancy Ezold because, like lawyers, coaches are often evaluated according to subjective standards that mask gender bias. Even though the won-lost record provides an objective measure of coaching performance, many coaches have been fired even when their records were successful because of the subjective aspects of their evaluations. NAGWS believes that all working women must have the protection for which Ms. Ezold is fighting.

The NATIONAL ASSOCIATION OF BLACK WOMEN ATTORNEYS (NABWA) was established to improve the administration of justice by, among other things, increasing opportunities for participation of black and other women at all levels of society. NABWA believes it is essential that the legal system ensure that black and other women be given the opportunity to enjoy a working environment free from sex discrimination. NABWA has a strong interest in cases such as this one which seek to ensure that women working in professional settings will not be subject to the "glass ceiling."

The NATIONAL ASSOCIATION OF NEGRO BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.

(NANBPWC, Inc.) was founded in the spring of 1935. The founders were owners, managers, college graduates, and other professionally licensed women who had managed to realize some measure of personal success at a time when there was no national "movement" to improve the lot of black Americans; when there was no "black capitalism" program nor any black studies curricula. Still, they were ready to lead.

NANBPWC, Inc. members include thousands of busy, working women in 300 clubs in the United States and Bermuda. We recognize the importance of sharing accomplishments with others and working together—to improve the quality of life in our communities; to create an atmosphere in which black women are able to bring about meaningful changes in our public and private lives; to offer positive models to the young women in our communities; to share our skills and knowledge with others; to explore alternate ways for women to meet the multiple challenges of today's world.

On the local level NANBPWC's 300 clubs identify and act upon the special needs of their communities. Workshops, programs and activities address a wide range of concerns, including: employment and economic development; divorce and child custody; housing; sex and race discrimination; community service; local, state, and national politics; and child care initiatives including foster care programs.

On the national level, NANBPWC, Inc. enjoys observer status at the United Nations, provides a link with other national and international groups, co-sponsors technical assistance for government agencies, and facilitates the awarding of scholarships and financial assistance to college-bound students.

Founded in 1899, the NATIONAL ASSOCIATION OF WOMEN LAWYERS® (NAWL®) is a voluntary national membership organization of the legal profession, having official representation in various organizations,

commissions and governmental agencies, both national and international. It is comprised of approximately 1100 individual members and ten women's bar association affiliate members, encompassing 10,000 additional members. Its individual members, from each state and the District of Columbia, include prosecutors, public defenders, private attorneys, trial and appellate judges from the state and federal courts, legislators, law professors and law students. Although the members of NAWL® hold a broad spectrum of personal views, they share a common concern that the law be administered justly, fairly and predictably. As an organization made up primarily of women it has and continues to be a supporter of women's rights in all facets of society. As an organization of legal professionals it upholds the integrity of the justice system. NAWL® advocates the elimination of all forms of discrimination, particularly discrimination against women and minorities.

The NATIONAL CONFERENCE OF WOMEN'S BAR ASSOCIATIONS (NCWBA) is a national nonprofit professional organization of state, regional, and local women's bar associations in forty-seven states and the District of Columbia. Its goals are to promote the advancement of women in the profession of law, to enhance the professional lives of women lawyers, and to advance issues of interest to women and the profession. NCWBA is an affiliate of the American Bar Association (ABA), and works closely with the ABA's Commission on the Status of Women in the Profession to further these goals.

The NATIONAL COUNCIL OF JEWISH WOMEN, INC. (NCJW) is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy and community service to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all. Founded in 1893, the National Council of Jewish Women has 100,000 members in over 500 communities

around the country. The National Council of Jewish Women believes that individual liberties and rights guaranteed by the Constitution are keystones of a free and pluralistic society and must be protected. Based on NCJW's *National Resolutions* stating our belief that equality of rights shall not be denied or abridged on the basis of gender, we join this brief.

The NATIONAL COUNCIL OF NEGRO WOMEN, INC. (NCNW), established in 1935, is a voluntary nonprofit membership organization committed to the advancement of educational, social, and economic opportunities for African American women. Through our thirty-three National African American Women's affiliate organizations, and 250 community based sections in forty-two states, NCNW has an outreach to four million women.

As African American women, issues of employment discrimination based on race and/or gender are of utmost critical concern. Federal anti-discrimination laws must be applied to professional employment decisions. Without this assurance, the discriminatory "glass ceiling" will continue to deny our society the talents of qualified women and minority professionals.

The NATIONAL ORGANIZATION FOR WOMEN (NOW) is the nation's largest feminist organization, with over 250,000 members and more than 650 chapters in all fifty states and the District of Columbia devoted to the advancement of women's rights. Since its inception, NOW has supported and worked toward full employment opportunities for women as well as protection from job discrimination and sexual harassment.

The NATIONAL WOMEN'S LAW CENTER (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's rights and the corresponding elimination of sex discrimination from all facets of American life. Since 1972, NWLC has worked to secure equal opportunity in the

workplace through the full enforcement of Title VII of the Civil Rights Act of 1964, as amended, and other civil rights statutes, and through the implementation of effective remedies for long-standing discrimination against women and minorities.

The NEW JERSEY WOMEN LAWYERS ASSOCIATION (NJWLA) is a nonprofit bar association whose purpose is to identify issues of concern to women attorneys, and to study and advise the public and its membership on issues affecting the legal status of women. Employment discrimination against women attorneys is of central interest to the membership of the NJWLA. The NJWLA therefore joins in the brief of *amici curiae* in support of Nancy O'Mara Ezold.

NEW YORK UNIVERSITY LAW WOMEN is a student organization that was founded in the 1970's by women, for women law students. It has matured into a group open to all students that creates and sponsors projects providing support for women and education for the law school community.

Some of the activities sponsored by Law Women include: a Public Record that reports in the student newspaper student impressions of the law school atmosphere for women, a Film and Discussion series, student-faculty receptions, a mentoring program, a speakers series, and various fundraising and social events. In addition, Law Women is an umbrella organization for several other groups such as: the Women in Prison Project, the Reproductive Freedom Project, the Coalition Against Sexual Violence, and the Women in Work Conference.

As law students committed to equality for women in the workplace, we support Ms. Ezold in her action against Wolf, Block, Schorr and Solis-Cohen.

The NORTHWEST WOMEN'S LAW CENTER is a private nonprofit organization in Seattle, Washington, that works to advance the legal rights of women through litigation, education, legislative advocacy, and providing in-

formation and referrals to women with legal problems. One of the Law Center's priority issues is the elimination of sex discrimination in employment. The Law Center has participated in numerous cases involving sex discrimination in employment before the federal circuit courts and the United States Supreme Court including *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) and *Hishon v. King and Spalding*, 467 U.S. 69 (1984).

The NOW LEGAL DEFENSE AND EDUCATION FUND (NOW LDEF) was founded in 1970 by the leaders of the National Organization for Women as a nonprofit civil rights organization to perform a broad range of legal and educational services nationally in support of women's efforts to eliminate sex-based discrimination and secure equal rights. A major goal of the NOW LDEF is the elimination of barriers that deny women economic opportunities. In furtherance of that goal, NOW LDEF has participated in numerous cases to secure full enforcement of laws prohibiting employment discrimination, including *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

The PENNSYLVANIA NATIONAL ORGANIZATION FOR WOMEN (PENNSYLVANIA NOW) is a membership group whose organizational purpose is to "bring women into full participation in the mainstream of American society." Nationally, NOW is the largest women's rights organization in the country. It is the leading advocate of women's equality in all areas of life. One of NOW's top priorities is the elimination of gender-based discrimination in employment. Pennsylvania NOW is particularly committed to the eradication of gender-based discrimination of women employed in Pennsylvania.

The SAN FRANCISCO WOMEN LAWYERS' ALLIANCE is a progressive, activist bar organization of over 400 lawyers founded in 1983 to provide a vehicle through which lawyers can address women's issues and enhance the position of women in our society. One of the issues of specific concern to the Alliance is the elimina-

tion of gender discrimination in employment, particularly in the legal profession.

The SOCIETY OF AMERICAN LAW TEACHERS (SALT), founded in April 1974, is the only national membership organization of law teachers in the United States. It includes approximately 700 law professors across the country who are concerned about the social responsibility of the legal profession. Its interests include law reform, legal education, and the supply and quality of legal representation. As a general matter, SALT takes public positions on issues involving equality, diversity, or academic freedom. It has taken public positions in a number of ways, including co-sponsoring events, submitting or joining *amicus curiae* briefs, writing letters, and making formal statements in support of judicial nominations.

WOMEN EMPLOYED is a national organization of working women, based in Chicago, with a membership of 2000. Since 1973, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed works to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service and public education.

The WOMEN LAWYERS ASSOCIATION OF MICHIGAN, with over 1000 members, including judges, attorneys, men and women, is an organization dedicated to the advancement of women in the practice of law. The organization is interested in this matter as it involves the treatment of women in the profession and, specifically, discrimination against women in the profession.

The WOMEN'S ALLIANCE FOR JOB EQUITY (WAJE) is a nonprofit organization dedicated to improving the economic and working conditions of women in the Delaware Valley. As part of our Support and Advocacy for Women with Job Problems program, WAJE counsels women who are experiencing unlawful employment practices, including sex discrimination.

The decision below is a significant step backward for women who face employment discrimination. It is imperative that Nancy Ezold and the many other women in the work force who are forced to endure gender-based discrimination have an effective remedy under Title VII. Thus, WAJE is pleased to join as *amicus* in support of Ms. Ezold.

The WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS was founded to promote and enhance the interests of women in the legal community, and all women, by encouraging professional interaction, education, and exchange of ideas among its members and between its members and other individuals, groups and organizations.

The Women's Bar Association is an advocate for the rights of women. Because the decision below will, if permitted to stand, have important policy and social ramifications, the Women's Bar Association joins this brief.

The WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK (WBASNY) is an organization of over 3000 attorneys comprising fifteen chapters throughout the State of New York concerned with issues that impact women both in the practice of law and in the law itself. Founded in 1980, its stated purposes include the following: to cooperate with, aid and support organizations and causes which advance the status and progress of women in society, to facilitate the administration of justice, and to cultivate the science of jurisprudence.

The WOMEN'S LAW CAUCUS OF RUTGERS UNIVERSITY SCHOOL OF LAW IN CAMDEN, NEW JERSEY is a student-run organization which supports the ideals of equality and dignity for women and recognizes the additional challenges women of all ages face because of their gender in the law school and the legal profession.

Our organization has a special and local interest in the *Ezold v. Wolf, Block, Schorr and Solis-Cohen* case and proudly joins Ms. Ezold in seeking the elimination of gender barriers to professional advancement.

The WOMEN'S LAW CAUCUS OF TEMPLE UNIVERSITY was established to promote and further the struggle for equal rights for women; to challenge and abolish sexist behavior and attitudes within the School of Law; and to work to eradicate sexism as it is expressed in the law.

The Women's Law Caucus has a strong interest in the outcome of *Ezold v. Wolf, Block, Schorr and Solis-Cohen*. Nancy Ezold's case will establish an important precedent for the implementation of Title VII of the Civil Rights Act of 1964. Her quest for equal treatment in the workplace will also contribute to the professional climate our members will encounter as we enter into the legal field. We are therefore pleased to join with women's organizations throughout the country as *amicus* in support of Nancy Ezold's struggle against the discriminatory practices of her former employer.

The WOMEN'S LAW CAUCUS OF WIDENER UNIVERSITY SCHOOL OF LAW is a student-run organization whose purpose is to educate the law school community about women's issues and to promote equal opportunity for female law students. Because virtually all of our members will practice law after graduation and be dependent on subjective performance evaluations, the outcome of this case is of utmost concern to our organization. The Women's Law Caucus of Widener University is thus proud to join as *amicus* in support of the case made by Nancy O'Mara Ezold.

The WOMEN'S LAW CENTER is an advocacy organization whose membership consists of attorneys and judges in the State of Maryland. In existence since 1971, the goal of the Women's Law Center is to promote the legal rights of women through litigation, legislation and education. The Women's Law Center has an interest in the elimination of all forms of discrimination, and has been particularly involved with cases of sex discrimination in employment. The Women's Law Center believes the issues involved in *Ezold v. Wolf, Block, Schorr and*

Solis-Cohen affect the rights of many women employed today.

Since 1971, the WOMEN'S LEGAL DEFENSE FUND (WLDF) has been a leading force in the drive to achieve equality for women throughout the United States. We advocate for strong laws, regulations, and policies to guarantee that women's participation in the labor force, and in society as a whole, is free of sex discrimination. In working toward the goal of economic justice for all women, WLDF is committed to ensuring that women are not prevented from advancing to positions of higher responsibility and pay.

YALE LAW SCHOOL WOMEN represents the interests of women who attend Yale Law School. The organization advocates women's rights generally, and works toward equal opportunity for female law students at Yale and to increase the number of female faculty at Yale Law School. Nearly all of the organization's members will practice law after graduation. Many will practice at law firms, and all will be employed as professionals whose success will depend in part on subjective evaluations of their work. Yale Law School Women joins this *amicus* brief to oppose sex discrimination in employment and particularly to support the applicability of Title VII to professional, subjective employment decisions.

9TO5, NATIONAL ASSOCIATION OF WORKING WOMEN, is a membership organization that is changing the image and working conditions of women. 9to5 is dedicated to empowering office workers to upgrade their pay, benefits, job opportunities, and respect on the job. 9to5 advocates for the rights of working women.